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WARRANT OF ARREST

SUPREME COURT OF THE UNITED STATES

COMMENCED HEREIN 1923

No. 994

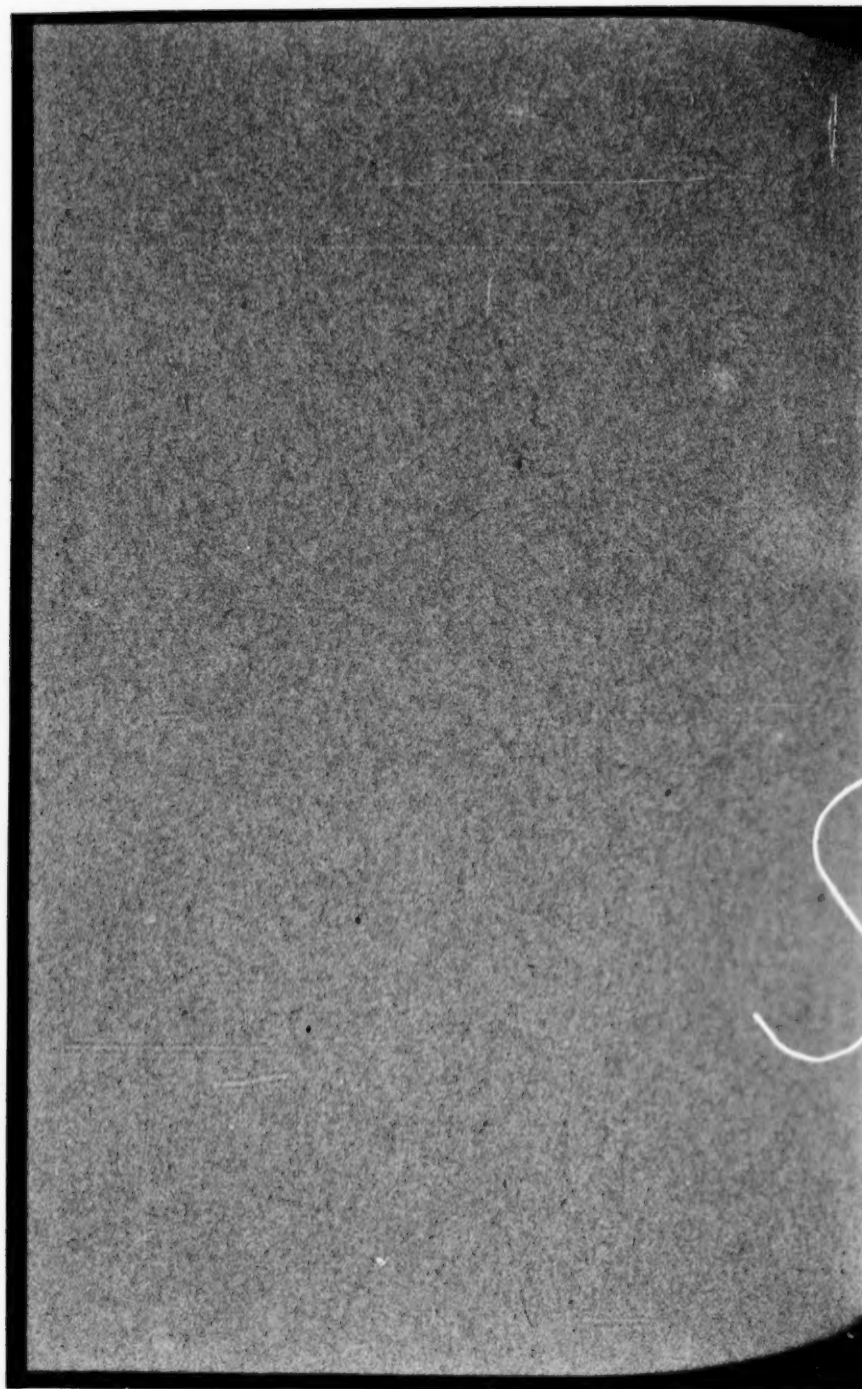
INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF
CALIFORNIA AND JOSEPH HAYES THOMAS HAYES,
ET AL., ETC, PLAINTIFFS IN ERROR,

JAMES ROLFE COMPANY AND GENERAL ACCIDENT,
FIRE AND LIFE ASSURANCE CORPORATION, LIM-
ITED

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED DECEMBER 4, 1923

(29,994)



(29,994)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 884

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF
CALIFORNIA AND JOSEPH HAYES, THOMAS HAYES,
ET AL., ETC., PLAINTIFFS IN ERROR,

v8.

JAMES ROLPH COMPANY AND GENERAL ACCIDENT,
FIRE, AND LIFE ASSURANCE CORPORATION, LIM-
ITED

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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[fol. 1]

IN THE

SUPREME COURT OF THE STATE OF CALIFORNIA

JAMES ROLPH COMPANY and GENERAL ACCIDENT, FIRE AND LIFE
ASSURANCE CORPORATION, LTD., a Corporation, Petitioners,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA
and Joseph Hayes, Thomas Hayes, Helen Hayes, and Mary Hayes,
by Mary Lordan, Guardian of their Persons and Estates, Respondents

PETITION FOR WRIT OF REVIEW—Filed Aug. 16, 1923

To the Honorable Supreme Court of the State of California:

The petitioners above named respectfully pray for a writ of review by this their verified petition and in this behalf set forth the following facts and causes for the issuance of the writ, viz:

1. That your petitioner, General Accident, Fire and Life Assurance Corporation, Ltd., now is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland and lawfully engaged therein and in the State of California in the business of employers' liability and workmen's compensation insurance and at the time of the alleged accident to Eugene Hayes, hereinafter referred to, was the insurer of petitioner James Rolph Company, a corporation, organized and existing under and by virtue of the laws of the State of California, against liability for compensation under the terms of the Workmen's Compensation, Insurance and Safety Act [fol. 2] of 1917 of the State of California.

2. That the above named respondents Joseph Hayes, Thomas Hayes, Helen Hayes and Mary Hayes by Mary Lordan guardian of their persons and estates filed in the office of the Industrial Accident Commission of the State of California an application for the adjustment of a claim for a death benefit by reason of the death of Eugene Hayes asserted by them under the Workmen's Compensation, Insurance and Safety Act of 1917. Your petitioners denied that they were entitled to workmen's compensation or a death benefit under said act upon the ground, (a) that the Industrial Accident Commission has no jurisdiction over said claim; (b) that said applicants had no claim under the Workmen's Compensation, Insurance and Safety Act of 1917; (c) that any claim applicants may have is one of admiralty and maritime jurisdiction over which the Industrial Accident Commission has no jurisdiction; (d) that the amendatory act

of June 10, 1922 amending Sections 24 and 256 of the Judicial Code purporting to give the Industrial Accident Commission jurisdiction of said claim is unconstitutional.

3. That thereafter said application came on for hearing before the Industrial Accident Commission and evidence was taken by a referee appointed by it. The undisputed testimony is as follows:

Eugene Hayes was a stevedore. At the time of his death he was in the temporary employ of the defendant below, James Rolph Company, which company was among other things an importer of coal. On September 5, 1922 Hayes was engaged in his capacity as stevedore upon the vessel, "West Islip," which was discharging a cargo of coal brought by it from Newcastle, New South Wales to San Francisco [fol. 3] cisco and consigned to the James Rolph Company. The vessel was moored to Pier 15 one of the piers in the navigable waters of San Francisco Bay and the cargo of coal was being unloaded from the hold of the vessel by stevedores of which Hayes was one. On the morning of September 5, 1922 Hayes had arrived upon the vessel but before going below to the hold where he was working he secured an iron plate used in the unloading work and in throwing the plate below became overbalanced and fell into the hold of the vessel sustaining injuries from which he later died. The findings of the Industrial Accident Commission relative to the accident are as follows:

"1. Eugene Hayes, while employed as a stevedore on September 5, 1922, at San Francisco, California, by defendant James Rolph Company, sustained injury occurring in the course of and arising out of his employment as follows: Fell into hold Number Two of the Steamship "West Islip," thereby fracturing his skull, said injury proximately causing his death the same day * * *.

2. At said time the "West Islip" was discharging a cargo of coal which it had carried from Newcastle, New South Wales, to Pier 15, one of the piers in the navigable waters of San Francisco Bay, which said cargo had been consigned to defendant James Rolph Company.

Briefly, then, the facts are that at the time of the accident the deceased was employed as a stevedore upon a vessel engaged in international commerce unloading a cargo, brought from a foreign port to San Francisco, from the vessel while it was docked at a pier in the navigable waters of San Francisco Bay.

4. That after the submission of the case the Industrial Accident Commission, on May 31, 1923, made and filed its findings and award in favor of the applicants below, for a death benefit amounting to a sum of three thousand nine hundred (\$3,900.00) dollars. Within twenty (20) days thereafter the defendants below filed an application for a rehearing upon the following grounds:

(a) That the Commission acted without and in excess of its [fol. 4] powers;

(b) That the evidence did not justify the findings of fact;

(c) That the findings of fact did not support the award.

And in said petition for a rehearing, your petitioners fully and particularly set forth the grounds upon which they claimed that said Commission acted without and in excess of its powers, and that the findings of fact did not support the order, decision and award, and that the evidence did not justify the findings of fact. Said petition for a rehearing was denied on the 18th day of July, 1923.

5. That unless said award is set aside by this court it will be enforced against your petitioners under a writ of execution upon a judgment which will be entered and docketed as provided in said Workman's Compensation, Insurance and Safety Act of 1917.

6. In support of this petition your petitioners aver that said Commission in rendering said decision and entering said award acted without and in excess of its powers and that the findings of fact do not support the award and that the order and decision are unreasonable. That your petitioners refer to the memorandum of points and authorities accompanying this petition in support of the grounds they urged for annulling the award of said Commission.

7. That sections 24 and 256 of the Judicial Code of the United States confer jurisdiction over the subject matter and the matters to this proceeding upon the courts of the United States and exclude the jurisdiction of the Industrial Accident Commission of the State of California. That the amendments to Sections 24 and 256 of the [fol. 5] Judicial Code approved June 10, 1922 purporting to give jurisdiction to the Industrial Accident Commission and to give claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel rights and remedies under the workmen's compensation law of any state and particularly of the State of California or of any district or territory were and are null and void and in violation of the Constitution of the United States of America and particularly in violation of Section 8 Article I of said Constitution (Congress may make necessary and proper laws for carrying out granted powers; Congress should have the power to regulate commerce with foreign nations and among the several states); and of Section 2 of Article III of said Constitution (extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction); and of Section 1 of Article XIV of the Amendments to the Constitution of the United States in that said amendments take property without due process of law and deny persons the equal protection of the laws. That your petitioners claim the benefit and protection of the aforesaid provisions of the Constitution of the United States of America.

8. That unless said award is annulled your petitioners will be deprived of their property without due process of law, in violation of Section 13 of Article I of the Constitution of the State of California, and in violation of Section 1 of Article XIV of the Amend-

ments to the Constitution of the United States of America. That your petitioners claim the benefit and protection of the aforesaid provisions of the Constitution of the State of California and of the Constitution of the United States of America.

9. That your petitioners have not the right to appeal from said [fol. 6] decision and award of said Commission and have no plain, speedy or adequate remedy other than by writ of review; that your petitioners are the parties beneficially interested in this proceeding, and that the names of the parties interested whose rights will be affected by this petition are your petitioners and the respondents herein.

10. That by the provision of said Compensation Act, your petitioners are required to make application to this court or to the District Court of Appeal in which your petitioners reside. Your petitioners apply to this court because petitioner, General Accident Fire and Life Assurance Corporation, Ltd., does not reside within any of the Appellate Districts in the State of California, and the amount involved exceeds two thousand dollars (\$2,000.00).

Wherefore, your petitioners pray:

1. That a writ of review issue out of this court to the said Industrial Accident Commission commanding it to certify fully to this Court, at a specified time and place, the record and proceedings in said cause, that the same may be inquired into and determined by this court.

2. That said matters and record be fully heard and considered by this court, and that it be ordered, adjudged and decreed that said award made by said respondent Industrial Accident Commission against your petitioners be annulled, vacated and set aside.

3. That in the meantime said respondents be required to desist from further proceeding in said matter to be reviewed, and that said Commission be required to refrain from issuing any copy, certified or otherwise, of said decision or award hereinbefore set forth, or permitting the same to be filed by any clerk of any Superior Court of the State of California, in and for any county or city and county of said state.

4. That your petitioners recover their costs herein and for such other and additional relief as may be proper and just in the premises.

James Rolph Company and General Accident Fire and Life Assurance Corporation, Ltd., By Redman & Alexander,
Their Attorneys.

[fols. 8 & 9] Jurat showing the foregoing was duly sworn to by H. M. Hinchman omitted in printing.

[fol. 10] [File endorsement omitted.]

[fol. 11] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA.
IN BANK

[Title omitted]

ORDER ISSUING WRIT OF REVIEW—Filed Aug. 20, 1923

By the COURT:

It is ordered that a writ of review issue as prayed for herein, returnable before this court in bank, at its court room in the State Building, San Francisco, on Tuesday, September 4, 1923, at ten o'clock, A. M.

Dated August 20, 1923.

Wilbur, C. J.

[fol. 12] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S. F. No. 10814

[Title omitted]

WRIT OF REVIEW—Filed Aug. 22, 1923

The People of the State of California to Industrial Accident Commission and Joseph Hayes, Thomas Hayes, Helen Hayes, and Mary Hayes, by Mary Lordan, Guardian of their persons and estates, respondents, Greeting:

Whereas, it has been represented to this court by the verified petition of the petitioners in the above entitled proceeding on file herein that you, the said Industrial Accident Commission, have made and rendered findings and award against said petitioners in a certain proceeding then and there pending before said Industrial Accident Commission and numbered therein No. 12688; and

Whereas, it has been further represented to this court, by said petitioners that said findings and award were and are erroneous and void for reasons set forth at length in said petition, reference thereto being hereby made; and being willing that the records and proceedings [fols. 13 & 14] in said matter, upon which said decision and award are based, and that all matters relating thereto shall be certified and returned by you to this court.

You, said Industrial Accident Commission, are hereby commanded to certify or cause to be certified and returned to this court on the 4th day of September, 1923, at ten o'clock A. M., on said day, at the courtroom of this court in the State Building, at the Civic Center in the City and County of San Francisco, a true, full and correct transcript of all papers, records, files and proceedings in the said proceeding above specified, pending before you, in your possession or under your control, in order that the same may be reviewed by this court and such action taken thereon as of right and as accord-

ing to law shall be taken and done, and that you then and there have this writ.

And pending the action of this court thereon, you, the respondents above named, are commanded and required to desist from further proceedings in said matter and to refrain from issuing or having issued any certified copy of said findings and award or permit any such copy to be filed with the Clerk of the Superior Court of the State of California, in and for any of the counties or cities and counties of said state.

Witness The Honorable Curtis D. Wilbur, Chief Justice and the Associate Justices of the Supreme Court of the State of California.

Attest my hand and the Seal of said Court this 21st day of August, A. D. 1923.

B. Grant Taylor, Clerk of said Court, By I. Erb, Deputy Clerk. (Seal.)

[fol. 15] [File endorsement omitted.]

Service of the within Writ of Review admitted this 21st day of August, 1923.

W. H. Pillsbury, By S. Edgecomb, Attorney for Respondents.

[fol. 16] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

RETURN OF RESPONDENT INDUSTRIAL ACCIDENT COMMISSION—Filed
Sept. 4, 1923

Respondent Industrial Accident Commission respectfully suggests to this court that the only questions presented in this proceeding are one of law involving the constitutionality of an act of Congress referred to herein, together with a question of law now under submission to this court in other maritime cases. That, therefore, a full copy of the proceedings of the Industrial Accident Commission herein is not necessary to determination of the case. The following is therefore respectfully submitted as the return of said Commission to the Writ of Review issued herein.

I. Industrial Accident Commission admits that the Petition for Writ of Review correctly states the facts.

II. Amplifying the statement of facts contained in the Petition [fol. 17] for Writ of Review, this respondent attaches as exhibits to this return the following documents: (1) Copy of the stipulations and list of issues entered into by the parties at the first hearing before respondent Commission in this matter, held February 2, 1923, as Exhibit "A"; (2) Findings and Award of respondent Commission, as Exhibit "B"; (3) A stipulation between counsel, as Exhibit "C."

III. Answering paragraph 6 of the Petition for Writ of Review, respondent denies that in entering its findings and award in the proceeding here under review, it acted without and in excess of its powers; denies that the findings of fact did not support the award; denies that the order and award are unreasonable.

IV. Answering paragraph 7 of the Petition for Writ of Review, this respondent denies that the amendments to sections 24 and 256 of the United States Judicial Code, approved June 10, 1922, are unconstitutional.

V. This respondent avers that its findings and award made and entered in the proceeding here under review are just and lawful and were made with full jurisdiction over the parties, subject matter and cause of action for the following reason:

1. Petitioners are subject to the provisions of the California Workmen's Compensation Act with respect to the proceeding here under review in that they have voluntarily elected by the taking out of workmen's compensation insurance, in the manner prescribed by section 70 of the California Workmen's Compensation, Insurance and Safety Act of 1917, to have their liability to their injured employees and dependents of deceased employees determined by said [fol. 18] act in the place and stead of the law maritime.

2. The petitioner insurance company is the sole party in interest and is directly and primarily bound to the compensation claimants in the present case by its policy contract. Said petitioner insurance company is not itself engaged in a maritime occupation and is not entitled to defend this proceeding upon the ground of alleged conflict between the state law and the law maritime. Said petitioner insurance company is further estopped to repudiate its policy contract.

3. The application of the California Workmen's Compensation Act to the injury which forms the basis of the proceeding here under review is authorized by an act of Congress, approved June 10, 1922, amending sections 24 and 256 of the United States Judicial Code, to save to claimants, other than a master or member of the crew of a vessel, their rights and remedies under the Workmen's Compensation Act of any state.

4. The application of the California Workmen's Compensation, Insurance and Safety Act of 1917 to the injury which forms the basis of the proceeding here under review is authorized by an act of Congress, approved March 6, 1917, amending sections 24 and 256 of the Federal Judicial Code, to save to claimants their rights and remedies under the Workmen's Compensation Act of any state.

5. The application of the California Workmen's Compensation, Insurance and Safety Act of 1917 to the injury which forms the basis of the proceeding here under review is authorized by sections 24 and 256 of the United States Judicial Code and by the "saving

clause" contained therein, without regard to the acts of Congress of June 10, 1922 and October 6, 1917.

6. The application of the California Workmen's Compensation, Insurance and Safety Act of 1917 to the injury which forms the [fol. 19] basis of the proceeding here under review does not contravene the essential purposes and the characteristic harmony and uniformity of the general maritime law in its interstate and international aspects and the application of such said statute is not excluded by said general maritime law.

7. The employment and subject matter here under review are local in character and may, therefore, be governed by the local law instead of by the general law maritime under recent decisions of the United States Supreme Court.

Wherefore, respondent Industrial Accident Commission of the State of California prays that its findings and award in this proceeding be affirmed by this court.

W. H. Pillsbury, Counsel for respondent Industrial Accident Commission.

[fol. 20]

EXHIBIT A TO RETURN

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

Portion of the Transcript of Testimony, Including Stipulations and Issues, of Hearing Held Before the Industrial Accident Commission in San Francisco, California, on February 2, 1923

It is hereby Stipulated:

(1) That Eugene Hayes, hereinafter termed the employee, was, on the 5th day of September, 1922, at San Francisco, California, in the employment of defendant, James Rolph Company, hereinafter termed the employer.

(2) That at the said time the General Accident and Life Insurance Company, was the insurance carrier for the defendant employer and is liable for any compensation herein awarded.

(3) That the application was filed within the time prescribed by law.

(4) That on the said September 5, 1922, the deceased employee was standing near the hold (number 2) of ship West Islip, that he lost his balance, falling into said hold, and sustaining thereby a fracture of the skull and internal injuries, proximately causing his death the same day.

[fol. 21] (5) That the said injury was not caused by wilful misconduct of the employee or employer nor was it intentionally self-inflicted.

(6) That all medical treatment furnished in the past has been furnished by the said employer.

(7) That notice of said injury was given the employer according to law.

(8) That at the time of death the decedent was a stevedore and was 45 years of age.

(9) That the funeral expenses, necessary for the burial of deceased, in the sum of \$110, have been paid by Comisky and Connolly; if an award is made these expenses can be made payable direct to Comisky and Connolly, to the amount of one hundred dollars.

The issues are:

- (1) Jurisdiction of Commission.
- (2) Average earnings of deceased.
- (3) Dependency.
- (4) Liability for burial expense.

[fol. 22]

EXHIBIT "B" TO RETURN

BEFORE THE INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA

No. 12688

JOSEPH HAYES, THOMAS HAYES, HELEN HAYES and MARY HAYES,
Minors, by Mary Lordan, Guardian of Their Persons and Estates,
Applicants,

vs.

JAMES ROLPH COMPANY and GENERAL ACCIDENT, FIRE & LIFE
ASSURANCE CORPORATION, LTD., Defendants

Applicants' attorney: J. J. O'Toole.

Defendants' attorney: W. F. Murray.

Findings and Award

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared and the matter having been regularly heard before James Sykes, Referee, and sub-

mitted for decision, this Commission makes its findings and award as follows:

Findings of Fact

1. Eugene Hayes, while employed as a stevedore on September 5, 1922, at San Francisco, California, by defendant James Rolph Company, sustained injury occurring in the course of and arising out of his employment, as follows: Fell into hold Number Two of the Steamship "West Islip," thereby fracturing his skull, said injury proximately causing his death the same day. At said time said defendant's insurance carrier was General Accident, Fire & Life Assurance Corporation, Ltd., and the employer and the employee were subject to the provisions of the Workmen's Compensation, Insurance and Safety Act of 1917.

2. At said time the "West Islip" was discharging a cargo of coal which it had carried from Newcastle, New South Wales, to Pier 15, [fol. 23] one of the piers in the navigable waters of San Francisco Bay, which said cargo had been consigned to defendant James Rolph Company.

3. At said time said Eugene Hayes was not a member of the crew of said steamship "West Islip," nor was he under the direction and control of its officers.

4. Employee left surviving him, wholly dependent, Joseph Hayes, Thomas Hayes, Helen Hayes and Mary Hayes, his minor children, who are entitled to a death benefit of \$3,800.00, payable at the rate of \$16.25 a week, together with an award for \$100.00 burial expense payable direct to Comiskey & Connolly. Said payments are based upon average weekly earnings of \$25.00. Payments accrued to and including May 22, 1923, are \$601.25; payments made are none; balance due as of said date \$601.25.

5. It is the judgment of this Commission that the whole amount of said death benefit should be paid directly to Mary Lordan, as guardian of the persons and estates of the applicants for the support of said minor children during their minority, to be received by her in her own right and disbursed in her discretion for such purpose.

6. The claimants' attorney is entitled to a lien against unpaid compensation for the reasonable value of his services in the sum of \$75.00.

Award

Award is therefore made in favor of Joseph Hayes, Thomas Hayes, Helen Hayes and Mary Hayes, applicants, against General Accident, Fire & Life Assurance Corporation, Ltd., defendant, of a death benefit and burial expense in the total sum of \$3,900.00 payable:

1. To Comiskey & Connolly the sum of \$100.00 for the burial expense.

[fol. 24] 2. To Mary Lordan, as guardian of the persons and estates of Joseph Hayes, Thomas Hayes, Helen Hayes and Mary Hayes, forthwith \$601.25, less an attorney's fee of \$75.00, payable to John J. O'Toole; and the further sum of \$16.25 to said applicant weekly for approximately 196.84 weeks and until the whole of this award shall have been paid; and

It is further ordered that the employer herein be dismissed from this proceeding and discharged from liability herein.

Dated at San Francisco, California, this 31st day of May, 1923.

Industrial Accident Commission of the State of California.

Will J. French, A. J. Pillsbury, Commissioners. Attest:
H. L. White, Secretary. (Seal.) JS.:AM.

[fol. 25] EXHIBIT "C" TO RETURN

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

Stipulation

It is hereby stipulated by and between the parties to the above entitled proceeding as follows:

1. That Eugene Hayes, the deceased employee in this proceeding, was not at the time of his fatal injury and death, the master or a member of the crew of the S. S. "West Islip," upon which he was injured.

2. That the objection to the jurisdiction of the Industrial Accident Commission over the claim for death benefit was raised by petitioners at the first opportunity in the proceedings, to-wit: in their answer to the application for adjustment of claim, and has not been abandoned by petitioners, but has been raised at all steps in said proceedings; that attached hereto are copies of the answer to the application (Exhibit "X") and petition for rehearing (Exhibit "Y") after findings and award by the Industrial Accident Commission.

3. That attached hereto (Exhibit "Z") is a copy of the policy of insurance issued by petitioner, General Accident Fire & Life Assurance Corporation, Limited, to petitioner, James Rolph & Company, referred to in Paragraph V of the return of respondent, Industrial Accident Commission.

Redman & Alexander, Counsel for Petitioners. Warren H. Pillsbury, Counsel for Respondent, Industrial Accident Commission.

[fol. 28] [File endorsement omitted.]

[fol. 29] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA.
IN BANK

[Title omitted]

SUBMISSION OF CAUSE—Filed Nov. 5, 1923

By the COURT:

All of the briefs having been filed pursuant to an order entered herein September 4, 1923, matter (review) submitted as of this date.
Dated: November 5, 1923.

Wilbur, C. J.

[fol. 30] SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

OPINION—Filed Nov. 14, 1923

This is a proceeding in review to test the validity of an award made by the respondent Industrial Accident Commission to the dependents of Eugene Hayes, who died as the result of injuries sustained while working as a stevedore upon a vessel afloat on the navigable waters of the Bay of San Francisco. His employer at the time, petitioner James Rolph Company, carried workmen's compensation insurance with General Accident, Fire and Life Assurance Corporation, Ltd., who is the other petitioner. This policy is a combined employers' [fol. 31] liability and workmen's compensation policy, which obligates the insurance carrier to pay the award made by the respondent Commission in this case, if the validity of such award shall be sustained.

Eugene Hayes, the deceased employee, at the time of his death was in the temporary employ of the James Rolph Company, which corporation was, among other things, an importer of coal. On September 5, 1922, Hayes was employed and was engaged in his capacity as stevedore upon a vessel, the "West Islip", which was discharging a cargo of coal brought from Newcastle to San Francisco consigned to the James Rolph Company. The vessel was moored to Pier 15, one of the piers in the navigable waters of the Bay of San Francisco. The cargo of coal was being unloaded from the hold of the vessel by stevedores, of whom Hayes was one. On the morning of the accident, Hayes had gone upon the vessel, but, before going below to the hold where he was required to work, he secured an iron plate used in the unloading process, and in attempting to throw the plate below, overbalanced and fell into the hold of the vessel, sustaining injuries from which he died. The Industrial Accident Commission found that Hayes while employed as a stevedore sustained injuries occurring in the course of and arising out of his employment. Over the objection of the petitioners that the Commission had no jurisdic-

tion over the claim for death benefits, the Commission made an award in favor of the applicants below for a death benefit amounting to the sum of thirty-nine hundred dollars. Within due time thereafter, the defendants filed an application for a rehearing, alleging that the Commission in making the award acted without and in excess of its jurisdiction. A rehearing being denied, petitioners have brought this proceeding.

It is the contention of the petitioners that at the time of the accident and injury to Eugene Hayes, he was engaged in the performance of a maritime contract, and in the actual performance of work of a maritime nature, thus divesting the respondent Industrial Accident Compensation of jurisdiction in the premises. In response, and in opposition, to this contention that the Commission was without jurisdiction to make an award in this case under the State Workmen's Compensation Act, by reason of a conflict of the provisions of such act with the federal law maritime, respondent advances five points. Briefly stated, the first four are: (1) That the Commission has jurisdiction in the premises in that the employer voluntarily elected, in the manner prescribed by section 70 of the California Workmen's Compensation Act, to bring its employees under said act; (2) that the petitioning insurance carrier is the sole party in interest, and is directly and primarily bound by its policy contract, and is estopped to repudiate an obligation voluntarily assumed for a valuable consideration; (3) that the Industrial Accident Commission has jurisdiction by virtue of sections 24 and 256 of the Federal Judicial Code as originally enacted, October 6, 1917; (Chap. 97, 40 U. S. Stats. 395.) (4) that the Commission has jurisdiction in that the application of the California Workmen's Compensation Act does not contravene the essential purpose and the characteristic harmony and uniformity of the general maritime law in its interstate and international aspects.

At the time this petition was filed, there was pending in this court two proceedings in certiorari which have since been decided, and which dispose of the issues raised by this petition and the four answering contentions of the respondent just stated. (*Alaska Packers Association v. I. A. C. and J. Hansen*, 66 Cal. Dec. 273, and *Zurich General Accident, etc. Co. v. I. A. C. and Jennie A. Denny*, 66 Cal. Dec. 277.) Because time for a rehearing had not elapsed when the [fol. 33] respondent Commission filed its answer in this matter, it reasserted its contentions one and two referred to. Points three and four have been reasserted by the Commission to save them for the record in the case if the present proceeding should later be carried to the Supreme Court of the United States, its declared intention in that regard being to secure a reversal, if possible, of the rule laid down in *Southern Pacific Co. vs. Jensen*, 244 U. S. 205, and *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149. We are satisfied with the conclusions reached and announced in the *Alaska Packers* case and in the *Zurich* case, *supra*. They satisfactorily dispose of the contentions thus far noted in this proceeding.

The fifth and last contention of the respondent, while adverted to in the *Alaska Packers* case, *supra*, was not directly decided. It is

that the Act of Congress approved June 10, 1922, amending sections 24 and 256 of the Judicial Code as enacted in 1917, confers jurisdiction upon the Industrial Accident Commission in cases like that involved in this proceeding. The Judicial Code, as it stood prior to October 6, 1917 (sec. 24 and 256), vested the United States District Court with original jurisdiction "of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it", and provided that the jurisdiction thus vested in the courts of the United States in such cases and proceedings "shall be exclusive of the courts of the several states". In a proceeding involving an attempt of the Workmen's Compensation Commission of New York to assume jurisdiction in the case of a stevedore receiving injuries which resulted in his death, while unloading a ship lying in navigable waters, the Supreme Court of the United States held that the work of a stevedore, in which work the decedent Jensen was engaged, was [fol. 34] maritime in its nature; his employment was a maritime contract; the injuries which he received were likewise maritime; and the rights and liabilities of the parties in connection therewith were matters clearly within the admiralty jurisdiction. (*Southern Pacific Co. v. Jensen*, 244 U. S. 205, 217, citing *Atlantic Transport Co. v. Imbrovek*, 234 U. S. 52, 59-60.) Jurisdiction was therefore denied to the Workmen's Compensation Commission.

Following the Jensen case, Congress, on October 6, 1917, amended the Judicial Code, sections 24 and 256, by the insertion in each section of a clause purporting to save "to claimants the rights and remedies under the workmen's compensation law of any state." (Chap. 97, 40 U. S. Stats. 395.) This amendment to the Judicial Code was held by this court to be unconstitutional in that it violated article III, section 2, of the Federal Constitution extending the judicial power of the United States to all cases of admiralty and maritime jurisdiction. (*Sudden & Christenson v. I. A. C.*, 182 Cal. 437.) In a case involving the same question, the United States Supreme Court also held the amendment unconstitutional declaring it beyond the power of Congress to authorize and sanction action by the states in prescribing and enforcing rights, obligations, liabilities and remedies designed to provide compensation for injuries suffered by employees engaged in maritime work. (*Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149.)

Following these decisions, the Judicial Code was again amended. On June 10, 1922, Congress once more attempted by reenactment of sections 24 and 256 of the Code to save to claimants for compensation for injuries to, or death of, persons other than the master or members of the crew of a vessel, their rights and remedies under the workmen's compensation laws of the various states. The act provided that such rights and remedies when conferred by work- [fol. 35] men's compensation laws should be exclusive, and "that the jurisdiction of the District Courts shall not extend to cases arising out of injuries to or death of persons other than the master or members of the crew, for which compensation is provided by the workmen's compensation law of any state, district, territory or pos-

session of the United States." (42 U. S. Stats. 634.) In our opinion, the Judicial Code as last amended is still subject to the objections pointed out by this court in *Sudden & Christenson v. I. A. C.*, supra, and by the Federal Supreme Court in *Knickerbocker Ice Co. v. Stewart*, supra. In effect, the last amendments do not differ from the earlier enactments, except that the master and members of crews are excluded from their operation, and the state compensation laws are made the exclusive remedies. Because of these exceptions, the statute is now more repugnant than it was before the last amendments, for the reason that it is discriminatory, and attempts to deprive the federal courts of jurisdiction over certain admiralty and maritime cases while vesting them with jurisdiction in others. As was pointed out in *Sudden & Christenson v. I. A. C.*, supra, the Federal Constitution provides that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction. It has been many times held that the work of a stevedore is maritime in its nature, and the rights and liabilities of the parties connected therewith are matters which are within the admiralty jurisdiction of the United States. (*Southern Pacific Co. v. Jensen*, supra; *Atlantic Transport Co. v. Imbrovek*, supra.)

Respondent admits that by this amendment "Congress retracts the scope of the law maritime and the jurisdiction of the United States courts in admiralty so that there is no longer either a substantive maritime law or an admiralty jurisdiction in the federal courts which shall conflict with the application of state workmen's compensation acts to longshoremen." In addition to what we have already said, an answer to this proposition is to be found in a decision of the Supreme Court of the State of Washington, which was recently called upon to consider the exact question. "By this amendment," say the Washington court, "Congress attempted to take from the District Courts jurisdiction where the workmen's compensation law of any state, district, or territory had given a remedy. It was an attempt, in effect, to bring within the workmen's compensation law of any state or territory a branch or a part of the admiralty jurisdiction of the United States. * * * but Congress has not exclusive right in determining where matters which are within the admiralty jurisdiction of the United States shall be adjudicated. Article III, section 2, of the federal Constitution provides in part as follows: 'The judicial power shall extend to * * * all cases of admiralty and maritime jurisdiction.'" The court then goes on to review a number of leading cases decided by the Supreme Court of the United States relating to the subject, and says: "In *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, 40 Sup. Ct. 438, 64 L. Ed. 834, 11 A. L. R. 1145, the 1917 amendment, as above stated, was held to be unconstitutional. The same reasons which defeated the constitutionality of that act would apply here to the effect that the state law cannot encroach upon the admiralty matters, where to do so would work material prejudice to the characteristic features of the general maritime law or interfere with the proper harmony and uniformity of that law in its international and interstate relations. This court is not holding the 1922 amend-

ment, wherein it attempts to divest the district court of jurisdiction, of no effect. The more precise question is whether the state has a right to encroach upon the general maritime law in a way that would affect its harmony and uniformity in its interstate relations. [fol. 37] * * * The bringing of an employer engaged in the stevedore business within the provisions of the Industrial Insurance Act would take from the admiralty jurisdiction conferred by the federal Constitution upon the United States and vest it in the state. As we read the decisions of the Federal Supreme Court, this may not be done, because to do so, as pointed out in *Southern Pacific Co. v. Jensen*, supra, and *Knickerbocker Ice Co. v. Stewart*, supra, would work material prejudice to the characteristic features of the general maritime law, and interfere with the proper harmony and uniformity of that law in its international and interstate relations." (*State v. W. C. Dawson & Co.*, 211 Pac. 724.) The opinion of the Washington court, above quoted, was first rendered in department. On rehearing, the holding in the department opinion was adhered to. (*State v. W. C. Dawson & Co.*, 212 Pac. 1059.)

In this case, as in the Washington case, reliance has been placed upon a line of decisions which hold that where a stevedore is working on the dock, which is but an extension of the land, and there receives his injury, he has a common law right of action which may, under certain circumstances, be withdrawn and he be permitted or required to take under a workmen's compensation act. (*State Ind. Comm. of N. Y. v. Nordenholt Corp.*, et al., 259 U. S. 263, 42 Supt. Ct. 473.) That case clearly differentiates the contention made by respondent, and points out the line of demarcation between those cases which fall strictly within the maritime jurisdiction and those which, because of their nature, are cognizable under state statutes. A stevedore who works upon a boat or upon navigable waters does not have a common law right of action which may be withdrawn and he be permitted or required to take under a compensation act. In the Nordenholt case, the distinction was pointed out, and the court said: "When an employee, working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles [fols. 38 & 39] are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer must be determined under the maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty jurisdiction; but not so when the accident occurs on land."

It follows therefore that the respondent Industrial Accident Commission acted without and in excess of its jurisdiction in this matter.

The award is annulled.

Waste, J. We concur: Lennon, J., Kerrigan, J., Myers, J., Seawell, J., Lawlor, J., Wilbur, C. J.

[fol. 41] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

JUDGMENT

It follows therefore that the respondent Industrial Accident Commission acted without and in excess of its jurisdiction in this matter. The award is annulled.

Waste, J. We concur: Lennon, J., Kerrigan, J., Myers, J., Seawell, J., Lawlor, J., Wilbur, C. J.

[fol. 42] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION FOR RECORD AND PARTIAL AGREED STATEMENT OF FACTS FOR DIMINUTION OF RECORD

Stipulated by and between counsel for plaintiffs in error and counsel for defendants in error that the clerk of the Supreme Court of California may return the following mentioned documents and none other as the record in the above-entitled proceeding upon writ of error.

1. Petition for writ of review in the Supreme Court of California.
2. Order granting writ of review.
3. Writ of review.
4. Return of Industrial Accident Commission with exhibits "A" and "B" and stipulation of counsel incorporated therein. It is understood that the partial agreed statements of fact appearing below in this stipulation shall take the place of exhibits "X" and "Y" and the insurance policy attached to said return, and that said exhibits [fol. 43] and policy shall be omitted from the record on error.
5. Order of submission.
6. Opinion and judgment of Supreme Court of California.
7. Copy of docket entries in office of clerk of Supreme Court of California.
8. Certificate of clerk of Supreme Court of California.
9. This stipulation.
10. Proceedings upon application for writ of error.

Further stipulated that defendants in error raised before the Industrial Accident Commission of California, in their answer filed

to the application for adjustment of claim in the proceeding before said Commission in this matter, the claim and defense that the application of the Workmen's Compensation Act of California was precluded by the constitution and the law maritime of the United States, and further claimed that Industrial Accident Commission was without jurisdiction to try and determine said proceeding for said reason. That said defense was insisted upon throughout the entire course of said proceeding before Industrial Accident Commission and was again raised and presented in the petition for rehearing filed by defendants in error with Industrial Accident Commission on June 8, 1923.

Further stipulated that the policy of insurance issued by General Accident, Fire and Life Assurance Corporation, Limited, to James Rolph Company, set out in full in the return of Industrial Accident Commission to the writ of review issued by the Supreme Court of California, contains, among other things, the following paragraphs defining the insurance coverage of said policy and the following paragraph setting forth the Declarations contained in said policy, and that said paragraphs appearing below are true and correct copies of the portions of said insurance policy indicated:

[fol. 44] "Universal Standard Workmen's Compensation Policy

General Accident, Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, United States Branch (Hereinafter Called the Corporation)

Does hereby agree with this Employer, named and described as such in the Declarations forming a part hereof, as respects personal injuries sustained by employees, including death at any time resulting therefrom as follows:

One (a). To pay promptly to any person entitled thereto, under the Workmen's Compensation Law and in the manner therein provided, the entire amount of any sum due, and all instalments thereof as they become due,

(1) To such person because of the obligation for compensation for any such injury imposed upon or accepted by this Employer under such of certain statutes, as may be applicable thereto, cited and described in an endorsement attached to this Policy, each of which statutes is herein referred to as the Workmen's Compensation Law, and

(2) For the benefit of such person the proper cost of whatever medical, surgical, nurse or hospital services, medical or surgical apparatus or appliances and medicines, or, in the event of fatal injury, whatever funeral expenses are required by the provisions of such Workmen's Compensation Law.

It is agreed that all of the provisions of each Workmen's Compensation Law covered hereby shall be and remain a part of this contract as fully and completely as if written herein, so far as they

apply to compensation or other benefits for any personal injury or death covered by this Policy, while this Policy shall remain in force. Nothing herein contained shall operate to so extend this Policy as to include within its terms any Workmen's Compensation Law, scheme or plan not cited in an endorsement hereto attached.

One (b). To indemnify this Employer against loss by reason of the liability imposed upon him by law for damages on account of injuries to such of said employees as are legally employed wherever such injuries may be sustained within the territorial limits of the United States of America or the Dominion of Canada. In the event of the bankruptcy or insolvency of this Employer the Corporation shall not be relieved from the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency. If, because of such bankruptcy or insolvency, an execution against this Employer is returned unsatisfied in an action brought by the injured, or by another person claiming by, through or under the injured, then an action may be maintained by the injured, or by such other person claiming by, through or under the injured, against the Corporation under the terms of this Policy for the amount of the judgment in said action not exceeding the amount of this Policy."

[fol. 46]

No. 21

"Endorsement

Not valid unless countersigned by a duly authorized representative of the corporation.

July 1st, 1922.

California

The obligations of Paragraph One (a) of the Policy to which this endorsement is attached include such Workmen's Compensation Laws as are herein cited and described and none other.

Chapter 586, Laws of 1917, State of California, the authorized title of which is the "Workmen's Compensation Insurance and Safety Act of 1917," (except the increase in any award under the provisions of Section 6 (b) thereof, insurance of such increase being prohibited by Section 31 (b) thereof), all the foregoing, subject to such exception, is, for the purposes of this insurance, called the Workmen's Compensation Law.

and all laws amendatory thereof and supplementary thereto which may be or become effective while this Policy is in force.

This Employer, upon the acceptance of this Policy, agrees that the remuneration of all employees of any contracting employer, who undertakes for this Employer any part of the business operations covered by this Policy under the conditions set forth in Section 25 of such Workmen's Compensation Law, shall be included in the return of remuneration upon which premium is computed, and such remuneration, so reported, shall in all respects, be governed by the

same terms, conditions and requirements of the Policy as the remuneration of the direct employees of this Employer. The requirements of this paragraph shall not apply if this Employer is not liable under said section or is exempted from such liability through compliance with its terms.

If this Employer furnishes board or lodgings to any employee, the value thereof shall be included in the remuneration on which the premium is based at monthly rates not less than the following:

For Board only.....	\$24.00
For Lodging only.....	6.00
For both Board and Lodging.....	30.00

The Policy is so amended that if this Employer is a corporation, the remuneration of the President, any Vice President, Secretary or Treasurer shall be returned and made subject to the premium charge at its actual amount but not in excess of \$1,666.66 per annum, the foregoing being without regard to the nature of the duties of any such officer.

The Company agrees to allow any reduction in the policy rates which may be promulgated by the California Inspection Rating Bureau under the Industrial Compensation Rating Schedule and/or the California Experience Rating Plan as approved by the Insurance Commissioner of California; and this Employer agrees to accept any increase in the policy rates which may be promulgated by the California Inspection Rating Bureau under the Industrial Compensation Rating Schedule and/or the California Experience Rating Plan. The effective date of any such reduction or increase shall be the effective date thereof fixed by the California Inspection Rating Bureau.

Attached to and forming part of Policy No. U-63848, issued by the General Accident Fire and Life Assurance Corporation, Ltd., of Perth, Scotland, to James Rolph and Co.

Frederick Richardson, United States Manager. Form Comp-3450 3M 4-23. Sample Policy.

[fol. 47½]

Declarations

Item 1. Name of this Employer: James Rolph & Co. P. O. Address: 60 California St., San Francisco, Calif.

For the purpose of serving notice, as in the Policy provided, this Employer agrees that this address may be considered as both the residence and business address of this Employer or any representative upon whom notice may be served.

Individual, co-partnership, corporation or estate? Corporation.

Item 2. The period during which the Policy shall remain in force, unless canceled as in the Policy provided (herein called the Policy Period) shall be from July 1st, 1922, to July 1st, 1923, at twelve and one minute o'clock A. M., standard time, as to each of said dates at the place where any operation covered hereby is conducted, as re-

spects that operation, or at the place where any injury covered hereby is sustained, as respects that injury.

Item 3. Locations of all factories, shops, yards, buildings, premises or other workplaces of this Employer, by Town or City, with Street and Number Main St. bet. Harrison and Bryant, Bunkers Pier 15, Quint St. Yard, Alameda Estuary, 60 California St. & elsewhere in Calif.

All business operations, including the operative management and superintendence thereof, conducted at or from the locations and premises defined above as declared in each instance by a disclosure of estimated remuneration of employees under such of the following Divisions as are undertaken by this Employer. (1) All industrial operations upon the premises. (2) All office forces. (3) Operations not on the premises.

Classification of operations: Note—If more than one classification indicate each other by (b), (c), (d), etc.		Estimated total annual remuneration	Rate per \$100 of remuneration	Estimated premium
1 (a).	8220. Coal Merchants receiving or shipping by water or by land and water, including stevedoring operations, if any.....	\$8,545	5.67	\$484.50
(x) President, any Vice-President, Secretary or Treasurer of corporate Employer who performs duties of Superintendent, Foreman or Workman. Not covered hereunder.				
2 (a)	Clerical Office Employees.....	8,810 3.000	.05	1.50
(b)	Draughtsman (engaged exclusively in the profession) office duties only	8,811
3 (a)	Erection, installation, repair or demonstration of Employer's product, as follows:			
(Manual Classification)				
(b)	Outside Salesmen, collectors and messengers (wherever engaged) who do not deliver merchandise.....	8,742
(c)	Drivers and Drivers' Helpers (if not included in 1) wherever engaged.			
(d)	Chauffeurs and Chauffeurs Helpers (if not included in 1) wherever engaged	7,380

Minimum Premium for this Policy shall be \$65.00.
Estimated Advance Premium \$486.00.

Item 4. The foregoing enumeration and description of employees includes all persons employed in the service of this Employer in connection with the business operations above described to whom re-[fol. 49] muneration of any nature in consideration of service is paid,

allowed or due together with an estimate for the Policy Period of all such remuneration. This enumeration and description with the estimated remuneration shall also include the President, any Vice-President, Secretary or Treasurer of this Employer if a corporation if actually performing such duties as are ordinarily undertaken by a superintendent, foreman or workman, but any such designated officer not so engaged shall not be included in such enumeration, description or estimated remuneration. The foregoing estimates of remuneration are offered for the purpose of computing the advance premium. The Corporation shall be permitted to examine the books of this Employer at any time during the Policy Period and any extension thereof and within one year after its final termination so far as they relate to the remuneration earned by any employee of this Employer while the Policy was in force.

Item 5. This Employer is conducting no other business operations at this or any other location not herein disclosed—except as herein stated: No Exceptions.

Item 6. No similar insurance has been canceled by any insurance carrier during the past year—except as herein stated: No Exceptions.

Item 7. The following signature is authorized and accepted by this Employer as his signature.

(Copy of Signature to Proposal.)

Item 8. There are no elevators at any of the premises above described under the Assured's control—except as herein stated: There are elevators.

[fols. 50 & 51] In witness whereof, the General Accident, Fire and Life Assurance Corporation, Ltd., by its United States Manager, has executed these presents, but this policy shall not be valid unless countersigned by an authorized representative of the Corporation.

Countersigned at San Francisco, Calif., this 10th day of June, 1923.

(Signed) Hind Co., Authorized Representative.

(EXHIBIT "Z")

Form Comp. 3178.

This stipulation is entered into this 26 day of November, 1923.

Warren H. Pillsbury, Counsel for Plaintiffs in Error. Redman & Alexander, Counsel for Defendants in Error.

[File endorsement omitted.]

[fol. 53] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed Nov. 22, 1923

To the Honorable Curtis D. Wilbur, Chief Justice of the Supreme Court of the State of California:

The petition of Industrial Accident Commission of the State of California and Joseph Hayes, Thomas Hayes, Helen Hayes and Mary Hayes, minors, by Mary Lordan, Guardian of their persons and estates, respectfully shows:

That in the records, proceeding and decision in the Supreme Court of the State of California, the same being the highest court of this state in which a decision could be had, manifest error has occurred in this proceeding, greatly to the damage of plaintiffs in error above named.

That, as appears in the record and proceeding, there was drawn in question by defendants in error herein the validity of an Act of the Congress of the United States approved June 10, 1922, 42 Stat. 634-5, Chap. 216, upon the ground that said Act of Congress was repugnant [fol. 54] to the Constitution of the United States, and the decision of this court was against the validity of said Act of Congress; and wherein there was drawn in question by defendants in error herein the validity of an authority exercised by plaintiffs in error herein under the Workmen's Compensation, Insurance & Safety Act of 1917 of the State of California and said Act of Congress of June, 10, 1922, upon the ground of its being repugnant to the Constitution and laws of the United States, and the decision of this court was against the validity of said authority, all of which fully appears in the record and proceeding of the case and is specifically set forth in the assignment of errors filed herewith.

A brief statement of the facts and of the proceedings had in this matter is as follows: Eugene Hayes, father of Joseph, Thomas, Helen and Mary Hayes, plaintiffs in error herein, was killed on September 5, 1922, at San Francisco, California, while working as a stevedore on the steamship West Islip, at said time afloat upon navigable waters of San Francisco Bay, by a fall into the hold of said vessel. Said Eugene Hayes was not a master or a member of the crew of said vessel. James Rolph Company, defendant in error, was the employer of Hayes at the time of his injury, and General Accident, Fire and Life Assurance Corporation, Ltd., was the insurer of said employer at said time under a policy of workmen's compensation insurance.

The Statutes of the State of California, hereinafter termed the "Workmen's Compensation Act," (Chapter 176, California Laws 1913; Chapter 586, California Laws 1917) provide a system of limited benefits or indemnity to disabled employees or dependents of deceased employees, injured in the course of and arising out of their employment without regard to fault, including maritime work-

[fol. 55] ers as far as they may constitutionally be included, and also provide for determination of any and all disputes arising under said Workmen's Compensation Act by the Industrial Accident Commission of the State of California, created therein. Claim was filed before said Industrial Accident Commission on January 2, 1923, by Mary Lordan, as guardian of the persons and estates of said Joseph Hayes, Thomas Hayes, Helen Hayes and Mary Hayes, minors, plaintiffs in error herein, against James Rolph Company and General Accident, Fire and Life Assurance Corporation, Ltd., for a death benefit under said Workmen's Compensation Act. Said defendants duly appeared and defended in said proceeding upon the grounds that the Workmen's Compensation Act of California could not be applied to the injury on account of its maritime character and the maritime character of the service rendered by the deceased and further that the Act of Congress of June 10, 1922, hereinbefore referred to, purporting to extend the application of said state workmen's compensation act to such maritime injuries, violated the Constitution of the United States. Said proceeding was regularly heard and determined by Industrial Accident Commission of California, which as its decision overruled said defenses and applied the Workmen's Compensation Act, awarding a death benefit to the minor children of deceased.

Decisions of the Industrial Accident Commission of California are reviewable by the Supreme Court of California by a writ of certiorari, denominated in the California statutes a writ of review. Such writ of review was regularly sued out by said defendants before said Commission from said Supreme Court of California, being issued August 21, 1923. This proceeding in review was regularly heard before said court which as its decision in the matter, entered on November 14, 1923, annulled the award of Industrial Accident [fols. 56 & 57] Commission upon the ground that said Act of Congress of June 10, 1922, was in violation of the Constitution of the United States and that the California Workmen's Compensation Act was precluded by the Constitution of the United States and law maritime from applying to the death of Eugene Hayes.

Industrial Accident Commission of the State of California is authorized by the Statutes of California to appear by its own counsel in any proceeding in review of its decisions, and to intervene, if possible, in any action or proceeding in which any question arising under or affecting its jurisdiction of the application of the California Workmen's Compensation Act may be presented.

Wherefore, petitioners pray that a writ of error returnable to the Supreme Court of the United States be allowed for the correction of the errors so complained of; that a citation be granted and signed; that the amount of the bond for costs required from plaintiffs in error be fixed; and that a transcript of record, proceedings and papers upon which said judgment was rendered, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of said court in such cases made and provided.

Warren H. Pillsbury, Attorney for Plaintiffs in Error.

Presented to and received by me this 21 day of November, 1923.
Curtis D. Wilbur, Chief Justice of the Supreme Court of
the State of California.

[fol. 58] [File endorsement omitted.]

[fols. 59 & 60] IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA

[Title omitted]

ORDER ALLOWING WRIT OF ERROR AND FIXING COST BOND—Filed
Nov. 22, 1923

Upon filing of a petition for writ of error with accompanying assignment of errors,

It is ordered that a writ of error be, and it is hereby allowed, to have reviewed in the Supreme Court of the United States the judgment heretofore entered herein,

It is further ordered that the amount of the bond for costs to be furnished by plaintiffs in error to be fixed at 500.00 dollars.

Dated this 21 day of Nov., 1923.

Curtis D. Wilbur, Chief Justice of the Supreme Court of the
State of California.

[fol. 61] [File endorsement omitted.]

[fol. 62] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed Nov. 22,
1923

Now come Plaintiffs in Error above named, and in connection with their Petition for Writ of Error herein, make and file the following assignment of errors upon which they will rely for reversal of the Order and Judgment of this Honorable Court made on the 14th day of November, 1923, as follows, to-wit:

I. The Supreme Court of California erred in determining and deciding that the Act of Congress of June 10, 1922, 42 Stats. 634-5, Chap. 216, amending sections 24 and 256 of the United States Judicial Code to extend the protection of state workmen's compensation acts to maritime workers other than masters and members of the crews of vessels, is unconstitutional.

II. Said court erred in holding and determining that the Workmen's Compensation, Insurance and Safety Act of 1917 of the State [fol. 63] of California, Chapter 586, California Stats., 1917, is precluded from application in the above entitled proceeding under the authorization of said Act of Congress, or otherwise, by asserted conflict with the constitution and the general law maritime of the United States.

III. Said court erred in holding and determining that the general maritime law and the constitution of the United States precluded the application to the present cause of said state workmen's compensation act, viewed as an elective statute adopted by the voluntary act of the parties by the method of election prescribed in said statute.

IV. Said court erred in holding and determining that the general maritime law and the constitution of the United States precluded jurisdiction being conferred upon the Industrial Accident Commission of the State of California to enforce the provisions of a policy of workmen's compensation insurance issued by defendant in error General Accident, Fire and Life Assurance Corporation, Ltd., to defendant in error James Rolph Company, agreeing to pay to injured employees of said assured or dependents of deceased employees, the benefits specified by the aforesaid state workmen's compensation act, conditionally upon execution by such employees or their dependents of release of rights under the law maritime.

Wherefore plaintiffs in error pray that the Supreme Court of the United States will reverse said final order and judgment of the Supreme Court of California, and remand this proceeding to said Supreme Court of California with instruction to hold said Act of Congress of June 10, 1922, to be constitutional and valid and to hold the Workmen's Compensation, Insurance and Safety Act of 1917 of [fols. 64 & 65] the State of California to be applicable to said injury sustained by Eugene Hayes, notwithstanding the claim of conflict between said Act and the Constitution and Law Maritime of the United States, and to take such further action herein as may be proper in conformity with the opinion of the Supreme Court of the United States, and that plaintiffs in error be allowed their costs herein and such other or further order or relief as may be deemed proper and just.

Dated this 21st day of November, 1923.

Warren H. Pillsbury, Attorney for Plaintiffs in Error.

Presented to and received by me this 21 day of Nov., 1923.

Curtis D. Wilbur, Chief Justice of the Supreme Court of the State of California.

[fol. 66] [File endorsement omitted.]

[fols. 67-70] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. 10814

[Title omitted]

BOND ON WRIT OF ERROR FOR \$500.00—Approved and filed Nov. 22,
1923

[fol. 71] [File endorsement omitted.]

[fol. 72] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

WRIT OF ERROR—Filed Nov. 22, 1923

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Chief Justice and the Justices of the Supreme Court of the State of California, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of California before you, or some of you, being the highest court of law or equity in the said state in which a decision could be had in the said suit between James Rolph Company and General Accident, Fire and Life Assurance Corporation, Limited, a corporation, petitioners vs. Industrial Accident Commission of the State of California and Joseph Hayes, Thomas Hayes, Helen Hayes and Mary Hayes, by Mary Lordan guardian of their persons and estates, respondents, S. F. No. 10814, wherein was drawn in question the validity of a statute of the United States and the decision was against its validity, and wherein was drawn in question an authority [fols. 73 & 74] exercised under said statute and under the statutes of the State of California, and the decision was against its validity, a manifest error hath happened to the great damage of the said Joseph Hayes, Thomas Hayes, Helen Hayes and Mary Hayes and of the Industrial Accident Commission of the State of California, as by their complaint appears. We be- willing that error, if any hath been, shall be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the Supreme Court at Washington within sixty days from the date hereof that the record and proceedings aforesaid being inspected, the said Supreme Court

may cause further to be done therein to correct that error, what of right, and according to the laws and statutes of the United States should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, this 21 day of November, 1923.

Walter B. Maling, Clerk of the United States District Court for the Northern District of California. [Seal of the U. S. District Court, Northern Dist. of California.]

Allowed by Curtis D. Wilbur, Chief Justice of the Supreme Court of the State of California.

[fol. 75] [File endorsement omitted.]

[fols. 76 & 77] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. 10814

CITATION ON ERROR—Filed Nov. 22, 1923; omitted in printing

[fols. 78 & 79] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM 1923

No. —

[Title omitted]

ADMISSION OF SERVICE

Due service of the accompanying citation issued in the above entitled proceeding and the writ of error upon which the same was issued, with receipt of a copy of each, is hereby admitted this 22 day of November, 1923.

Receipt is further acknowledged of a copy of each of the following papers:

1. Petition for Writ of Error.
2. Assignment of Error.
3. Order Allowing Writ of Error and Fixing Amount of Cost Bond.

Redman & Alexander, W. C. Bacon, Attorney- for Defendants in Error.

[fol. 80] [File endorsement omitted.]

[fol. 81] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

DOCKET ENTRIES

Clerk Supreme Court of the State of California

1923.
 Aug. 16. Filed Petition for writ of review and Points and Authorities.
 20. Writ ordered to issue, returnable Sept. 4, 1923.
 21. Writ issued.
 22. Writ returned with service.
 Sept. 4. Filed return of respondent Industrial Acc. Commission.
 4. Matter called, respondent 30 days; petitioner 30 days for briefs then to be submitted or placed on calendar as ordered.
 Oct. 5. Filed brief of respondent Ind. Acc. Comm.
 Nov. 2. Filed petitioner's reply brief.
 5. Matter review submitted as of this date.
 14. Award is annulled. Waste, J. We concur: Lennon, J., Kerrigan, J., Meyers, J., Seawell, J., Lawlor, J., Wilbur, C. J.

[fol. 82] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. —

[Title omitted]

CERTIFICATE OF CLERK OF SUPREME COURT OF CALIFORNIA

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing and annexed are true and correct copies of petition for writ of review; order granting writ of review; writ of review; portions of return of Industrial Accident Commission to writ of review specified in stipulation attached hereto; order of submission; opinion of Supreme Court of California; judgment of Supreme Court of California; copy of docket entries in Clerk's office.

Stipulation for record from Supreme Court of California and partial agreed statement of facts. Petition for writ of error; original assignment of errors, order allowing writ of error and fixing cost bond, bond on writ of error. Original writ of error, original citation and admission of service of defendant in error of foregoing papers on proceeding in error.

Witness my hand and the seal of Supreme Court of California this 27th day of November, A. D., 1923.

B. Grant Taylor, Clerk of the Supreme Court of California,
By I. Erb, Deputy. [Seal of the Supreme Court of California.]

Endorsed on cover: File No. 29,994. California Supreme Court. Term No. 684. Industrial Accident Commission of the State of California and Joseph Hayes, Thomas Hayes, et al., etc., plaintiffs in error, vs. James Rolph Company and General Accident, Fire and Life Assurance Corporation, Limited. Filed December 6th, 1923. File No. 29,994.

(1372)